

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11027 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KOLI VINODBHAI BABUBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MS BANNA S DUTTA for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of

preventive detention dated 12th October, 1998 made by the District Magistrate, Bhavnagar, under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'dangerous person' within the meaning of Section 2 (c) of the Act. As many as 4 offences punishable under Chapter XVI of the Indian Penal Code have been registered against the petitioner and are pending trial. Besides, the police has recorded statements of some six witnesses who have given statements in respect of the nefarious activities carried on by the petitioner and its adverse effect on the public order. The detaining authority, while recording his subjective satisfaction, has stated that of the said six witnesses, five witnesses were summoned before him and he had personally verified the statements of the said five witnesses and was satisfied about the genuineness of the said witnesses. Upon perusal of the records, I find that the said statement made in the grounds of detention is not supported by the materials on record. The statements of the witnesses have been recorded by the Police Inspector and the verification has been made by the Divisional Police Officer. However, none of the witnesses appears to have been summoned before the detaining authority nor the detaining authority has recorded his personal verification in respect of any of the witnesses. Hence, the subjective satisfaction recorded by the detaining authority being not supported by the materials on record, is vitiated. It is clarified that I do not mean to say that the statements of the witnesses are required to be verified personally by the Detaining Authority himself. What is emphasized is that the statement made in the grounds of detention must be truthful and shall be supported by the materials on record.

Petition is, therefore, allowed. The impugned order dated 12th October, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. Petitioner, unless is required to be detained in some other case, be released forthwith.

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Prakash*